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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 NETCHOICE, LLC, d/b/a NetChoice,

13 Plaintiff,

14 v.

15 ROB BONTA, ATTORNEY GENERAL OF
16 THE STATE OF CALIFORNIA, in his official
17 capacity,

18 Defendant.

Case No. 5:24-cv-07885-EJD

**MOTION OF ELECTRONIC PRIVACY
INFORMATION CENTER FOR LEAVE
TO SUBMIT BRIEF AS *AMICUS*
CURIAE IN SUPPORT OF
DEFENDANT**

Hearing Date: December 17, 2024

Time: 9:00 a.m.

Judge: Hon. Edward J. Davila

Court: Courtroom 4, 5th Floor

Action Filed: November 12, 2024

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT the Electronic Privacy Information Center (“EPIC”)
 3 respectfully moves for leave to file a brief as *amicus curiae* in support of Defendant’s
 4 Opposition to Plaintiff’s Motion for Preliminary Injunction. The proposed *amicus curiae* brief
 5 is attached to this application as Exhibit A. Defendant consents to the filing of this brief.
 6 Plaintiff does not oppose.

7 **STATEMENT OF INTEREST**

8 The Electronic Privacy Information Center (“EPIC”) is a public interest research center
 9 in Washington, D.C., established in 1994 to focus public attention on emerging privacy and
 10 civil liberties issues. EPIC regularly participates as *amicus* in cases concerning the First
 11 Amendment implications of platform regulation. See EPIC, *The First Amendment* (2024).¹

12 EPIC was an organizational plaintiff in both *Reno v. ACLU*, 521 U.S. 844 (1997) and
 13 *Ashcroft v. ACLU*, 542 U.S. 656 (2004). *Amicus* is wary of regulations that would censor online
 14 speech or jeopardize what remains of users’ anonymity online. But *Amicus* also recognizes the
 15 need for guardrails in the design of online platforms. Kids are especially vulnerable to harm
 16 online and deserve special protections. *Amicus* believes that SB 976, which addresses the risks
 17 to children that arise from the algorithmic curation of content to maximize time spent on-
 18 platform, is a sensible and effective means of confronting technology companies’ harmful
 19 business practices. *Amicus* has decades of experience evaluating state and federal legislative
 20 proposals to regulate the internet, and *Amicus* believes that SB 976’s approach to tech
 21 regulation is consistent with the First Amendment. *Amicus*’s ultimate interest here is ensuring
 22 that the Court’s decision about NetChoice’s challenge to SB 976 reflects the important limits
 23 set by the Supreme Court on First Amendment challenges to regulation, is based on a concrete
 24 understanding of how content curation actually works, and takes into account how age
 25 assurance can be implemented in ways that protect users’ privacy and expression online.

26
 27 ¹ <https://epic.org/issues/platform-accountability-governance/the-first-amendment-and-platform-regulation/>.

ARGUMENT

Amicus’s proposed brief, attached here as Exhibit A, offers important context as this Court considers Plaintiff’s motion for a preliminary injunction. *Amicus* addresses the specific provisions of SB 976 in the context of Plaintiff’s argument that they inhibit expressive activity and make personalized feeds impossible, informed by *Amicus*’s specific expertise with privacy regulations, free speech, and the underlying technologies at issue. *Amicus* also explains the proper First Amendment considerations for age assurance requirements, informed by our understanding of the underlying technology and our experience evaluating the First Amendment implications of a wide range of laws involving age assurance. *See* EPIC, *Age Assurance* (2024).²

This Court has broad power to accept amicus briefs, so long as the brief “is useful or otherwise desirable to the court.” *California by and through Becerra v. U.S. Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019). Courts in this District have long accepted amicus briefs in similar circumstances—that is, where the proposed amicus offers “unique information or perspective that can help the court beyond” what the parties provide themselves. *Sonoma Falls Developers, LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (cleaned up). Where, as here, proposed *Amicus* is a non-profit organization with specific expertise in the issues pending before this court, an *amicus curiae* brief offers a unique perspective that should prove useful to the Court. Especially in light of the lack of opposition by either Party, proposed *Amicus* respectfully requests that the Court grant the application to proceed as *Amicus Curiae*.

² <https://epic.org/issues/platform-accountability-governance/age-assurance/>.

CONCLUSION

Accordingly, *Amicus* respectfully request that this Court grant leave to file the attached brief.

Dated: December 10, 2024

Respectfully submitted,

By: /s/ Alan Butler

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 10, 2024, the **MOTION OF ELECTRONIC PRIVACY INFORMATION CENTER TO SUBMIT A BRIEF AS AMICUS CURIAE IN SUPPORT OF DEFENDANT** and attachments were filed with the Clerk of the U.S. District Court for the Northern District of California using the Court's CM/ECF system.

Dated: December 10, 2024

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